

### **Remarks**

Applicant has amended Claims 28 and 34. No new matter has been entered by these amendments. Support for the amendments may be found throughout the specification, including, but not limited to, Page 7, lines 5-20, Page 10, lines 19-24, Page 11, lines 13-24, Page 12, lines 1-12, Page 13, lines 1-2, and Figures 1 and 2.

### **Examiner's Interview**

The Applicant would like to thank the Examiner for the phone interview conducted on April 22, 2008. Briefly, during the interview, the Applicant discussed the "undulating" element in Claim 28 and support for undulating in the specification. The Examiner indicated that undulating may not be the best term to describe the invention as claimed in Claim 28. The Applicant indicated that the air-filled insulative pockets are undulating in the cross-sectional view. The Examiner indicated that undulating may be supported by the specification for Claim 28.

Additionally, the Applicant and the Examiner discussed the open spaces between the first air filled insulative pockets communicating with the second air-filled insulative pockets in a heat transfer path of Claim 28. The Examiner indicated that there is a space between the first flexible structure and the second structure where the open spaces would communicate. The Applicant cited the first and second insulative pockets alternatively facing each other forming the plurality of open spaces in Claim 34, and the Examiner indicated that such language had support in the specification. The Applicant indicated that the claims would be amended to reflect such elements.

### **Argument**

#### **I. Examiner's Rejection of Claims 28-37 under 35 U.S.C. §112, 1<sup>st</sup> Paragraph is Legally Inappropriate**

The Examiner has rejected claims 28-37 as failing to comply with the written description requirement by stating that the specification fails to provide support for the first and second flexible films being undulating per claims 28, 30, 34, and 37. "Undulating" is defined as "to

move with a sinuous or wavelike motion; display a smooth rising-and-falling or side-to-side alternation of movement”. [www.dictionary.com](http://www.dictionary.com). The specification states that insulative pockets 18 extend downward in outer layer 14 from one quarter to one half inch approximately, and extend upward in bottom outer layer 16. Page 9 of the present application, lines 16-19. Such a downward and upward display of outer layer 14 and 16, respectively, indicates a rising-and-falling alternation of movement. Figure 2 shows the first and second flexible films 22 and 24 in such an undulating configuration, where the insulative pockets 18 extend substantially downward from upper film 20 and insulative pockets 18 extend substantially upward from film 26. Pages 9-10 of the present application. The Examiner even states “Figures 2-4 may be somewhat undulating, however, this is a cross-sectional view therefore the film is not actually undulating”. Nonfinal Office Action 01/24/08, Page 2, ¶3. An undulating configuration is perhaps best shown by a cross-sectional view, Applicant respectfully request the Examiner to provide evidence of what view supports an undulating configuration. If the Examiner is stating a finding of fact, then the Applicant respectfully requests that the Examiner come forward with specific evidence, as required by administrative proceedings. See MPEP §2144.03, “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known”. Contrarily, the cross sectional view displays such an undulating feature of the first and second flexible films. There is no *in haec verba* requirement that newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. MPEP §2163. Consequently, there is proper support for the first and second flexible films being undulating in the specification.

Also, the Examiner states that the specification fails to provide support for the “heat reflective elements dispersed throughout” a film per claims 28, 29, 30, 31, 34, 35, and 37. However, the specification states that the flat film 26 and 24 is impregnated or coated with a heat reflective material, such as flecks of aluminum or other heat reflective flecked material or pigments. Page 10 of the present application, lines 8-18. “Flecks of aluminum” or “heat reflective flecked material” or “pigments” provides support for “elements”. “Elements” is defined as “a component or constituent of a whole”. [www.dictionary.com](http://www.dictionary.com). “Flecks of aluminum” or “heat reflective flecked material” or “pigments” are components or constituents of

the film. Moreover, the Examiner states that “elements” could encompass other things, i.e. mirrors, not supported by the specification; however, the specification need not support other things, i.e. mirrors, only that which is claimed by Claims 28, 29, 30, 31, 34, 35, and 37. The Applicant respectfully requests the Examiner to cite to some law, regulation, or rule stating that the specification has to support other things that are not supported in the specification. Again, the Applicant notes that the specification does not have to encompass other reflective elements, but rather encompasses the reflective material as disclosed in the specification and claimed. The specification must clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed. *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Therefore, the specification provides proper support for heat reflective elements dispersed throughout a film as claimed in Claims 28, 29, 30, 31, 34, 35, and 37.

Additionally, the Examiner states that the specification fails to provide support for the second moisture impervious film having an additional reflective coating thereon per Claim 29. The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). The specification states that the film may be impregnated or coated with a heat reflective material, such as flecks of aluminum, an aluminum pigmented coating, or other heat reflective flecked material or pigments. Page 10, lines 8-15, and Page 13, lines 11-17. Such a listing in the specification conveys to one of ordinary skill in the art that reflective coating can be additional to the impregnation of heat reflective material. And the specification does not exclude the combination of the heat reflective material dispersed within the film and a coating thereon. And since there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure, then the specification provides proper support for Claim 29’s second moisture impervious film having an additional reflective coating thereon.

Finally, the Examiner has stated that the specification fails to provide support for the “nonstick” recitation in Claim 33. The specification provides proper support for the nonstick limitation where bottom layer 16 has a smooth surface as to not adhere to the curing concrete nor leave any marks on the associated concrete surface. The Examiner is reminded that there is no *in*

*haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. MPEP §2163. Such a disclosure of “smooth surface as to not adhere to the curing concrete” makes it readily apparent that the bottom layer includes a nonstick surface to one of ordinary skill in the art. In sum, the Applicant respectfully requests that the Examiner withdraw the rejection of Claims 28-37 under 35 USC §112, 1st Paragraph.

II. Examiner’s Rejection of Claims 28-31 and 33-37 under 35 U.S.C. §103(a) as being unpatentable over Hines, Edgel, or Hunter in view ADPA or Kern is legally inappropriate

The Examiner has stated that all of the primary references teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant’s Figure 1 and 2. First, the Applicant objects to the Examiner’s characterization of Claims 28 and 34 as drawn to Figures 1 and 2. Additionally, Hines, Edgel, and Hunter do not contain each and every limitation of Claims 28 and 34. Claim 28 claims “the first and second open spaces face the second and first air-filled pockets, respectively, and communicate in a heat transfer path as to form a flexible heat reflective concrete cure blanket”. Claim 34 claims the “first and second insulative pockets alternately face the second and first open spaces, respectively, forming a chamber space between the first and second insulative pockets”...“wherein the second open spaces between the second insulative pockets communicate with the first insulative pockets in a heat transfer path”. Hines, Edgel, and Hunter are silent to the respective elements in Claims 28 and 34; therefore, Hines, Edgel, and Hunter, in view of Kern, do not render Claims 28 and 34 obvious. The Applicant respectfully requests the Examiner to withdraw such rejection.

III. Examiner’s Rejection of Claim 32 under 35 USC §103(a) as being as being unpatentable over Hines, Edgel, or Hunter in view ADPA or Kern and Sheridan is legally inappropriate

While the specifically claimed elements in Claim 32 is broader than the specific disclosure in the Sheridan Reference, the patentability of Claim 32 is based upon the

patentability of independent Claim 28, as discussed above. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

IV. Examiner's Rejection of Claims 28-31 and 33-37 under 35 U.S.C. §103(a) as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA or Kern is legally Inappropriate

The Examiner has stated that Brockhaus, Handwerker, or Aanestad ("all primary references") teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant's Figure 1 and 2. First, the Applicant objects to the Examiner's characterization of Claims 28 and 34 as drawn to Figures 1 and 2. It is important not to import into a claim limitations that are not part of the claim. MPEP §2111.01, citing *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). Secondly, Brockhaus, Handwerker, Aanestad, and Kern do not contain each and every limitation of Claims 28 and 34. Claim 28 claims "the first and second open spaces face the second and first air-filled pockets, respectively, and communicate in a heat transfer path as to form a flexible heat reflective concrete cure blanket". Claim 34 claims the "first and second insulative pockets alternately face the second and first open spaces, respectively, forming a chamber space between the first and second insulative pockets"... "wherein the second open spaces between the second insulative pockets communicate with the first insulative pockets in a heat transfer path". Brockhaus, Handwerker, Aanestad are silent as to the respective elements in Claims 28 and 34; therefore, Brockhaus, Handwerker, Aanestad in view of Kern do not render Claims 28 and 34 obvious. The Applicant respectfully requests the Examiner to withdraw the rejection of claims 28-31 and 33-37 under 35 U.S.C. §103(a) as being unpatentable.

V. Examiner's Rejection of Claim 32 under 35 U.S.C. §103(a) as being as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA or Kern and Sheridan is legally inappropriate

While the specifically claimed elements in Claim 32 is broader than the specific disclosure in the Sheridan Reference, the patentability of Claim 32 is based upon the

patentability of independent Claim 28, as discussed above. Accordingly, the obviousness rejection for Claim 32 under 35 U.S.C. §103(a) is legally insufficient.

### **Conclusion**

In light of the preceding discussion, Applicant submits the following claims 28-37 contain patentable subject matter. On this basis, Applicant respectfully submits that the Examiner should allow such claims.

Any amendments made during prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as acknowledgement of the validity of any rejection raised earlier in prosecution, nor as acknowledgement that any citation made against the application is material to the patentability of the application prior to amendment.

No fees are believed due with this Response, however, the Commissioner is hereby authorized to charge any underpayment in fees, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000, of which the undersigned is an authorized signatory.

Respectfully submitted,



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